

### **REMARKS/ARGUMENTS**

Reconsideration and withdrawal of the rejection of the application are respectfully requested in view of the amendments and remarks made herein, which place the application in condition for allowance.

Applicant notes with appreciation the Examiner's finding that the present invention novel over the cited prior art.

### **Status of claims and formal matters**

Claims 1 and 3-5 are pending in this application.

In particular, amended claim 1 specifies that the sugarless boiled sweet exhibits an amorphous state. Support for the amendments made to claim 1 is found on page 1, lines 12-13 of the specification as originally filed. Furthermore claim 1 also specifies both properties of the coating, i.e. being amorphous and avoiding moisture regain over time. Support for this amendment can be found at page 13 lines 10-11 and in example 2

In addition "*the plant gums and microcrystalline cellulose*" are excluded from the recitation of the high molecular weight polysaccharides of claim 3. No new matter has been introduced.

It is submitted that the claims as amended, herewith are patentably distinct over the prior art in the Office Action, and these claims are in full compliance with the requirements of 35 U.S.C §112.

### **Response to claim objections and rejections – 35 USC § 103(a):**

Claims 1 and 3-5 are rejected under 103(a) as allegedly being unpatentable over Hartigan et al in view of Cheruki et al [US 7,317,838]. The Applicants respectfully traversed these grounds of rejection.

The pending rejections merely rely on the fact that the limitation “*for coating sugar-free boiled sweet*” has not been taken into consideration when assessing inventive step because as a preamble it merely recites the purpose of the process and that the body of the claim does not depend on the preamble for completeness. However, the MPEP §2143.03 states that , “*all words in a claim must be considered in judging the patentability of that claim against the prior art.*” In re Wilson 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)

The amended claims are now directed toward a process for coating an amorphous sugarless boiled sweet by applying a coating syrup comprising a selected mixture of at least one polyol, at least one high molecular weight polysaccharide, at least one fat and at least one silicate (claim 1).

As substantiated in the specification, the Applicant has surprisingly and unexpectedly identified that, “*the coating syrup advantageously comprises at least 5 % by weight of the said polyol, and at most 70 % by weight. Above this content, undesirable crystallization phenomena are indeed observed, which mean that the coating becomes opaque*” (page 10, lines 8-14 of the present specification). The specific composition of the coating syrup of the invention therefore exhibits the unexpected and surprising properties of being amorphous and avoiding moisture regain over time.

As an amorphous composition, the syrup does not crystallize and thus cools down and hardens to form a hard and translucent coating which keeps the translucent appearance of the sugarless boiled sweet.

As a result, the amorphous sugarless boiled sweet exhibits unexpected and surprising advantages. Indeed the amorphous sugarless boiled sweet does not become sticky and opaque in an ambient atmosphere, and thus can be retail without individual wrapping (page 5 lines 9-17 of the present specification)..

There is no teaching and no suggestion in the cited art, which it is actually possible or desirable to develop the coating syrup combining these two properties in order to produce the advantageous amorphous sugarless boiled sweet.

As emphasized in Hartigan et al, the coating layer is formed by crystallization, thus significantly indicating that the coating composition is not amorphous as in the present invention (column 3 lines 37-44, column 7 lines 62-63, column 8 lines 1-2). Furthermore, the coating process of Hartigan et al is preferentially applied to chocolate coating, which clearly implies the appearance modification of the sweet being coated.

In Cherukuri et al, the coating syrup which is based on sorbitol in the crystalline form is also formed by crystallization (Column 1 lines 9-11). As a matter of fact, the crystallization of the coating layer of Cherukuri et al is initiated by seeding of a dusting mix (column 2 lines 60-61).

Thus, the entire coating process of both Cherukuri et al and Hartigan et al involves crystallization while the instant process precludes crystallization phenomena. Indeed, the instant specification clearly excludes from the scope of protection “*the techniques of hard or soft sugar-coating, frosting, sanding, wet crystallization which do not consist of hard and translucent coating not modifying the initial appearance of the boiled sweet*” (from page 5 lines 36 to page 6 line 2).

As a matter of fact, Cherukuri et al and Hartigan et al do not suggest the claimed invention, as they never address the issue of forming a non-crystallized hard and translucent coating.


In view of the foregoing, Applicant has respectfully pointed out that none of the cited prior art documents, taken alone or in combination, offers any incentive to develop a coating process whereby the coating is amorphous in order to maintain the

translucence and avoid moisture regain of the boiled sweet after coating and over time.

The instant claims thus do not contravene 35 USC 103(a).

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,  
YOUNG & THOMPSON

A handwritten signature in black ink, appearing to read 'Robert J. Patch', written over a horizontal line.

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